

APPEAL NO. 090021
FILED MARCH 17, 2009

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 5, 2008. The issues before the hearing officer were:

- (1) Does the compensable injury (of _____) extend to include:
(1) disc herniations at C4-5; (2) protrusion with impingement at C5-6; (3) stenosis at C3-7, bilateral foraminal stenosis at C4-7; (4) cervical spondylosis; (5) cervical lordosis at C3-4 and C4-5; (6) subluxation at C4, C5, and C6; (7) protrusion at L3-4; (8) disc herniation at L4-5, L5-S1; (9) stenosis at L3-4; (10) lumbar spondylosis; and (11) lumbar degenerative disc disease?
- (2) Has respondent 1/cross-appellant (self-insured) waived the right to contest compensability of the cervical spine injury by not timely contesting the injury in accordance with Section 409.021?

The hearing officer determined that the compensable injury of _____, includes: (1) cervical spondylosis with bilateral foraminal stenosis at C4-5, C5-6 and C6-7, more marked on the left side at C4-5 and C5-6; (2) reversal of the cervical lordosis; (3) moderate narrowing of the C4-5 and C5-6 disc spacer moderate to marked narrowing of the C6-7 and C7-T1 disc space; (4) anterior and posterior osteophytes at those levels; and (5) encroachment on the right C5-6, C6-7 and C7-T1 neural foramina and on the left at C4-5, C5-6 and C6-7 neural foramina.

Also, the hearing officer determined that “[e]xcept as to those specifically listed above, the _____ injury does not extend to include any other lumbar or cervical condition in issue at this hearing.”

The hearing officer determined that the self-insured “waived the right to contest compensability of the specific cervical spine injury (conditions) detailed above, because it did not timely contest the injury in accordance with” Section 409.021.

The appellant/cross-respondent (claimant) appealed the hearing officer’s carrier waiver and extent-of-injury determinations that were not favorable to her. The self-insured responded to the claimant’s appeal, urging affirmance. Also, the self-insured appealed the hearing officer’s carrier waiver and extent-of-injury determinations that were not favorable to the self-insured.

The appeal file does not contain a response from respondent 2 (subclaimant).

DECISION

Reversed and remanded.

We reverse and remand this case to the hearing officer for reconstruction of the record and to correct inconsistencies and errors with regard to the dates in relation to the issues in dispute.

RECONSTRUCTION OF THE RECORD

Section 410.203(a)(1) requires the Appeals Panel to consider the record developed at the CCH. Efforts to locate the record of the proceeding have been unsuccessful. The appeal file contains the claimant's and self-insured's exhibits. The file indicates that there was no court reporter and the file does not contain a transcript, or a tape or CD recording of the CCH proceeding. Consequently, we remand the case to the hearing officer for reconstruction of the CCH record, or forwarding of the CCH record if it can be located. See Appeals Panel Decision (APD) 060353, decided April 12, 2006.

INCONSISTENCIES AND ERRORS

We note that there are inconsistencies and errors between the findings of fact, conclusions of law, decision, and the discussion portion of the decision and order with regard to all of the following dates: (1) date of injury; (2) date the self-insured first received written notice; (3) date of expiration for the 60-day carrier waiver period; and (4) date the self-insured filed a notice of denial.

SUMMARY

We reverse and remand this case to the hearing officer for reconstruction of the record and to correct inconsistencies and errors with regard to the dates in relation to the issues in dispute. On remand, the hearing officer is to: (1) reconstruct the record; and (2) reconcile the inconsistencies between the findings of fact, conclusions of law, decision, and the discussion portion of the decision and order, and correct any errors therein.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas

Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **(self-insured through the Texas Association of Counties RMP)** and the name and address of its registered agent for service of process is

**EXECUTIVE DIRECTOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge